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## **OLR Bill Analysis**

### **HB 6687**

#### ***AN ACT CONCERNING CERTIFICATES OF MERIT.***

##### **SUMMARY:**

This bill expands the types of health care providers who may provide a prelitigation opinion letter (sometimes called certificate of merit) concerning evidence of negligent medical care in malpractice cases.

The bill also requires that instead of including a detailed basis for the formation of the opinion, the opinion letter include a detailed statement identifying one or more breaches of the prevailing professional standard of care (the issue in the malpractice case).

Under current law, the failure to obtain and file the opinion letter is grounds for the case to be dismissed. The bill gives claimants 60 days to remedy this failure, after being ordered to do so by the court, before the case is dismissed for these reasons.

**EFFECTIVE DATE:** Upon passage, and applicable to actions pending on or accruing on or after that date.

##### **HEALTH CARE PROVIDERS QUALIFIED TO SUBMIT CERTIFICATE OF MERIT**

By law, before filing a medical malpractice or apportionment complaint (see BACKGROUND), an attorney or claimant must obtain a written, signed opinion from another health care provider that there appears to be evidence of medical negligence. A copy of the opinion letter, with the author's name expunged, must be attached to the required good faith certificate that must accompany the complaint.

Under current law, the opinion letter must be from a "similar health care provider." Generally, similar health care providers are those

trained and experienced in the same specialty or discipline as the defendant, and certified in the same specialty if applicable (see BACKGROUND).

The bill also allows an opinion letter from health care providers who are not similar health care providers but are otherwise legally qualified to be expert witnesses. By law, this includes a provider who, to the court's satisfaction, has sufficient training, experience, and knowledge from actively practicing or teaching in a related field within the five years before the incident giving rise to the claim, to be able to provide expert testimony on the prevailing professional standard of care in a given medical field.

The bill classifies all providers who may submit an opinion letter as "qualified health care providers."

## **BACKGROUND**

### ***Apportionment Complaints***

The opinion letter requirement also applies to apportionment complaints against another health care provider. An apportionment complaint is a defendant's claim in a medical malpractice lawsuit that another health care provider, who the plaintiff did not make a defendant, committed malpractice and partially or totally caused the plaintiff's damages.

### ***Similar Health Care Providers***

By law, similar health care providers may testify as expert witnesses, and may also submit an opinion letter as specified above. Similar health care providers are either of the following:

1. if the defendant is a specialist or holds himself or herself out as a specialist, a provider (a) trained and experienced in the same specialty as the defendant and (b) certified by the appropriate American board in that specialty, provided that if the defendant is providing treatment or diagnosis for a condition not within his or her specialty, a specialist trained in that condition is also considered a similar health care provider; or

2. if the defendant is not board certified, trained, or experienced as a specialist, or does not hold himself or herself out as a specialist, a provider (a) licensed by Connecticut or another state requiring the same or greater qualifications and (b) trained and experienced in the same discipline or school of practice as the defendant through active involvement in practice or teaching within the five years before the incident giving rise to the claim.

### **Related Cases**

Several state Supreme Court decisions have interpreted the statute that this bill amends (CGS § 52-190a). For example, in *Bennett v. New Milford Hospital, Inc.*, 300 Conn. 1 (2011), the court granted the defendant's motion to dismiss because the author of the opinion letter was not a "similar health care provider" within the meaning of the statute. The defendant specialized in emergency medicine, but the opinion letter's author described himself as "a practicing and board certified general surgeon with added qualifications in surgical critical care, and engaged in the practice of trauma surgery."

Also, in *Wilcox v. Schwartz*, 303 Conn. 630 (2012), the court held that a written opinion letter satisfies the statute's "detailed basis" requirement "if it sets forth the basis of the similar health care provider's opinion that there appears to be evidence of medical negligence by express reference to what the defendant did or failed to do to breach the applicable standard of care."

### **Related Bill**

sSB 1154 (File 617), reported favorably by the Judiciary Committee, allows someone whose malpractice case was dismissed for failure to meet the certificate of merit requirement to file a case again under the accidental failure of suit statute.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 28 Nay 16 (04/12/2013)